Jefren bin Mohamed Razali v Dato' Seri Hj Mustafar bin Hj Ali (sued in his capacity as Pengerusi Lembaga Tatatertib Kumpulan Sokongan (No 1), Malaysian Immigration Department) & Ors

HIGH COURT (IPOH) — JUDICIAL REVIEW APPLICATION NO AA-25–5–04 OF 2020
SU TIANG JOO JC
21 JANUARY 2022

Administrative Law — Judicial review — Certiorari — Applicant served Malaysian Immigration Department — Applicant dismissed from service — Whether applicant requested documents necessary for disciplinary proceedings — Whether applicant served with all necessary documents — Whether applicant ought to apply for discovery of documents — Whether applicant ought to lodge police report in relation to forgery of signature — Whether lack or oral hearing amounted to breach of natural justice — Whether oral hearing required — Whether there was undue delay in pursuing disciplinary proceedings — Whether there was condonation of wrongdoing — Evidence Act 1950 s 73A(3) — Public Officers (Conduct and Discipline) Regulations 1993 regs 4(2)(e), (i), 38(f) & (g) — Rules of Court 2012 O 53 r 6

The applicant was a government servant who had served the Malaysian Immigration Department for 23 years. Disciplinary proceedings were conducted against the applicant for an act of misconduct ie having approved an application for a Malaysian International Passport by one Harlizah bt Jaman ('Harlizah') who used a forged national identity card in breach of regs 4(2)(e) and 4(2)(i) of the Public Officers (Conduct and Discipline) Regulations 1993 ('the 1993 Regulations') and punishable under regs 38(f) and (g). The applicant was found guilty and consequently, he was dismissed from service. Disgruntled with the decision, the applicant filed the present application for judicial review to quash the respondents' decision and to be reinstated ('encl 25'). The issues raised in this application were: (a) whether the applicant had requested for documents vide his letter dated 19 April 2018 when asked to make his representations and if so, whether the failure by the respondents to comply amounted to a breach of natural justice in the disciplinary proceedings — the documents referred to were the application form by Harlizah for Malaysian International Passport, the applicant's work attendance punch cards for the month of March 2016, and the letter dated 21 September 2016 from the National Registration Department to the Malaysian Immigration Department saying inter alia that Harlizah's MyKad did not exist; (b) whether the lack of oral hearing amounted to a breach of natural justice in the

disciplinary proceedings; and (c) whether there was undue delay in pursuing disciplinary proceedings and related to this, whether there was condonation of the wrongdoing.

Held, dismissing encl 25 with costs of RM2,000 to be paid by the applicant to the respondents:

(1) The court found that the respondents had not received the applicant's letter dated 19 April 2018 because, in the applicant's letter of representations of 2 May 2018 to the show-cause letter there was no mention at all of the said letter. In any event, there was no evidence to show that the applicant had lodged a police report in relation to his falsified signature in the application form. There was a body of case law which had held that in such a circumstance, bereft of a timeous police report, any allegation of forgery was but a bare allegation. The applicant was facing disciplinary proceedings and not a prospective civil action and by reason of which, s 73A(3) of the Evidence Act 1950 would not apply to exclude the admissibility of his police report if he had lodged one (see paras 46–48).

(2) The applicant was supplied with the charge in the show-cause letter dated 3 April 2018 calling upon him to reply within 21 days of receipt and he had acknowledged receipt thereof. Therefore, he had been served with all the necessary documents required by law. Further, with the applicant in this case emphasising on his loss of livelihood, his failure to resort to the procedure of discovery pursuant to O 53 r 6 of the Rules of Court 2012 to challenge the authenticity of his signature on the impugned application form weighed heavily against him. In the circumstances, premised upon the facts and the law, the complaint by the applicant about not being supplied the documents was devoid of merits (see paras 50–51, 53 & 55).

(3) The 1993 Regulations and the Public Services Disciplinary Board Regulation 1993 which governed the disciplinary proceedings which the applicant was subject to, did not confer any right of oral hearing. In this case, the charge was very specific with the particulars of the date and the alleged offence clearly set out in the show-cause letter. The issue was whether he was the one who processed the impugned application. There was ample evidence against him. The lack of an oral hearing, in the circumstance of this case, had not caused any injustice to the applicant (see paras 56 & 63).

(4) Where the procedure is provided by written laws then the courts should be wary of invoking common law. It ought to be noted that there was no limitation period for a disciplinary charge under the 1993 Regulations. In relation to the applicant's argument that the delay in prosecuting the charge against him would drive a reasonable tribunal to hold that there

was condonation, surely public policy dictated, that the concept of condonation, could have no place at all in cases involving a contravention of public service regulations which would have the effect of prejudicing the protection of the integrity of the Malaysian passports and borders. To hold otherwise, would be plainly irrational (see paras 64–65 & 69).

[Bahasa Malaysia summary

Pemohon merupakan kakitangan kerajaan yang telah berkhidmat dengan Jabatan Imigresen Malaysia selama 23 tahun. Prosiding tatatertib telah dijalankan terhadap pemohon atas perbuatan salah laku iaitu telah meluluskan permohonan untuk mendapatkan Pasport Antarabangsa Malaysia oleh seorang Harlizah bt Jaman ('Harlizah') yang menggunakan kad pengenalan palsu bertentangan dengan peraturan 4(2)(e) dan 4(2)(i) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 ('Peraturan 1993') dan boleh dihukum di bawah peraturan 38(f) dan (g). Pemohon didapati bersalah dan akibatnya, dia telah diberhentikan daripada perkhidmatan. Tidak berpuas hati dengan keputusan tersebut, pemohon memfailkan permohonan semasa untuk semakan kehakiman untuk membatalkan keputusan responden-responden dan dikembalikan semula ke dalam perkhidmatan ('lampiran 25'). Isu-isu yang dibangkitkan dalam permohonan ini adalah: (a) sama ada pemohon telah memohon dokumen melalui suratnya bertarikh 19 April 2018 apabila diminta membuat representasi dan jika ya, sama ada kegagalan responden-responden untuk memenuhi permohonan tersebut telah melanggar keadilan semula jadi dalam prosiding tatatertib — dokumen yang dirujuk ialah borang permohonan oleh Harlizah untuk Pasport Antarabangsa Malaysia, kad kehadiran kerja pemohon bagi bulan Mac 2016, dan surat bertarikh 21 September 2016 daripada Jabatan Pendaftaran Negara kepada Jabatan Imigresen Malaysia yang menyatakan antara lain bahawa MyKad Harlizah tidak wujud; (b) sama ada ketiadaan pendengaran lisan telah melanggar keadilan semula jadi dalam prosiding tatatertib; dan (c) sama ada terdapat kelewatan yang tidak wajar dalam meneruskan prosiding tatatertib dan berkaitan dengan ini, sama ada terdapat pengampunan kesalahan tersebut.

Diputuskan, menolak lampiran 25 dengan kos sebanyak RM2,000 dibayar oleh pemohon kepada responden-responden:

(1) Mahkamah mendapati responden-responden tidak menerima surat pemohon bertarikh 19 April 2018 kerana, dalam surat representasi pemohon bertarikh 2 Mei 2018 sebagai jawapan kepada surat tunjuk sebab, tidak ada menyebut sama sekali berkenaan surat tersebut. Walau apa pun, tiada keterangan menunjukkan bahawa pemohon telah membuat laporan polis berhubung tandatangannya yang dipalsukan dalam borang permohonan. Terdapat banyak kes yang telah memutuskan bahawa dalam keadaan sedemikian, tanpa laporan polis yang dibuat tepat pada masanya, apa-apa dakwaan pemalsuan hanyalah

dakwaan kosong. Pemohon menghadapi prosiding tatatertib dan bukan tindakan sivil dan oleh sebab itu, s 73A(3) Akta Keterangan 1950 tidak akan terpakai untuk mengecualikan kebolehterimaan laporan polisnya jika dia telah membuat laporan tersebut (lihat perenggan 46–48).

(2) Pemohon telah dibekalkan dengan pertuduhan dalam surat tunjuk sebab bertarikh 3 April 2018 yang memintanya menjawab dalam tempoh 21 hari selepas penerimaan dan dia telah mengakui penerimaannya. Oleh itu, dia telah disampaikan dengan semua dokumen yang diperlukan oleh undang-undang. Selanjutnya, dengan pemohon dalam kes ini menekankan tentang kehilangan mata pencariannya, kegagalannya menggunakan prosedur penemuan menurut A 53 k 6 Kaedah-Kaedah Mahkamah 2012 untuk mencabar kesahihan tandatangannya pada borang permohonan tersebut telah memprejudiskan kesnya. Dalam keadaan sedemikian, berdasarkan fakta dan undang-undang, aduan oleh pemohon tentang dia tidak dibekalkan dokumen adalah tidak bermerit (lihat perenggan 50–51, 53 & 55).

(3) Peraturan 1993 dan Peraturan-Peraturan Lembaga Tatatertib Perkhidmatan Awam 1993 yang mengawal prosiding tatatertib yang terpakai ke atas pemohon, tidak memberikan apa-apa hak untuk pendengaran lisan. Dalam kes ini, pertuduhan adalah sangat spesifik dengan butiran tarikh dan kesalahan yang didakwa dinyatakan dengan jelas dalam surat tunjuk sebab. Isunya ialah sama ada dia yang memproses permohonan tersebut. Terdapat banyak keterangan terhadapnya. Ketiadaan pendengaran lisan, dalam keadaan kes ini, tidak menyebabkan apa-apa ketidakadilan kepada pemohon (lihat perenggan 56 & 63).

(4) Jika prosedur telah diperuntukkan oleh undang-undang bertulis maka mahkamah harus berhati-hati untuk menggunakan undang-undang biasa. Perlu diingatkan bahawa tiada tempoh had untuk pertuduhan tatatertib di bawah Peraturan 1993. Berhubung dengan hujah pemohon bahawa kelewatan dalam mendakwa pertuduhan terhadapnya akan mendorong tribunal yang munasabah untuk berpendirian bahawa terdapat pengampunan, sudah pasti dasar awam memperuntukkan, bahawa konsep pengampunan, tidak mempunyai tempat sama sekali dalam kes yang melibatkan pelanggaran peraturan perkhidmatan awam yang akan memberi kesan menjejaskan perlindungan integriti pasport dan sempadan Malaysia. Untuk memutuskan sebaliknya adalah jelas tidak rasional (lihat perenggan 64–65 & 69).]

Cases referred to

Abdul Ghani Che Mat v Pengerusi Suruhanjaya Pasukan Polis & Ors [2016] MLJU 1062; [2017] 3 CLJ 399, CA (distd)

Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor [2002] 2 MLJ 131; [2002] 1 CLJ 493, CA (distd)

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] 1 MLJ 169, PC (distd)
Bank Kerjasama Rakyat Malaysia Sdn Bhd v Chong Voon Chung [2021] MLJU 359; [2021] 1 LNS 250, CA (refd)
Dr Ahmad Jaafar bin Musa lwn Suruhanjaya Perkhidmatan Pelajaran [2018] 9 MLJ 331; [2017] 1 LNS 2236, HC (refd)
Ezaky Mulya bin Sapawi v Dato' Sri Nadzri Siron (Pengerusi Lembaga Tatatertib, Kumpulan Sokongan (No 1)) & Ors [2020] MLJU 1920; [2020] 1 LNS 1557, HC (folld)
Floral Trends Limited v Li Onn Floral Enterprise (M) Sdn Bhd and Anor [2006] MLJU 339; [2006] 6 CLJ 525, HC (refd)
Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor [2002] 3 MLJ 714, CA (refd)
Kerajaan Malaysia & Ors v Tay Chai Huat [2012] 3 MLJ 149; [2012] 3 CLJ 577; [2012] 1 MLRA 661, FC (folld)
Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal [2001] 2 MLJ 417; [2001] 2 CLJ 525, FC (refd)
Mat Ghaffar bin Baba v Ketua Polis Negara & Anor [2008] 2 MLJ 1; [2008] 1 CLJ 773, CA (distd)
Mohamad Faisal Anudin bin Azmi v Dato' Mustafa bin Hj Ibrahim (Pengerusi Lembaga Tatertib Kumpulan Sokongan (No 1) Jabatan Imigresen Malaysia, Putrajaya) & Ors [2021] 11 MLJ 522; [2021] 8 CLJ 83, HC (refd)
Mohd Zulhazi Mohd Zulkafli v Suruhanjaya Pasukan Polis Diraja Malaysia & Anor [2014] 5 MLJ 632; [2014] 1 LNS 574, CA (distd)
Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased) [2008] 6 MLJ 1; [2008] 6 CLJ 573, FC (refd)
Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 308; [1995] 1 CLJ 619, CA (distd)
Setiausaha Suruhanjaya Pasukan Polis & Ors v Cheah Yen Khee [2016] 2 MLJ 34; [2016] 2 CLJ 789, CA (distd)
Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor [1990] 3 MLJ 364; [1991] 1 CLJ Rep 419, SC (distd)
Wong Hon Leong David v Noorazman bin Adnan [1995] 3 MLJ 283; [1995] 4 CLJ 155, CA (refd)
Yanlinus Philip v Mustafa bin Hj Ibrahim Pengerusi Lembaga Tatertib Kumpulan Sokongan (No 1) Jabatan Imigresen Malaysia, Putrajaya & Ors [2021] MLJU 704; [2021] 1 LNS 574, HC (refd)
Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor [2011] 5 MLJ 465; [2012] 1 CLJ 448, FC (distd)

Legislation referred to

Evidence Act 1950 s 73A(3)
Federal Constitution art 135(2)

A Interpretation Acts 1948 and 1967 s 54
Public Officers (Conduct and Discipline) Regulations 1993 regs 3, 4(1), (2)(a), (2)(e), (2)(i), (2)(j), 34(1), (2), 37(2)(a), (2)(b), (4), (5), 37D(a), (b), 38(g)
Public Services Disciplinary Board Regulation 1993 regs 2, 12, 13, 14 ,
B 15(1), 16(2), (3), (4b), 38(f)
Rules of Court 2012 O 53 r 6

Manjit Singh Mann (Manjit Singh Mann & Co) for the applicant.
Ashyraf Ashy'ari bin Kamaruzaman (Perak State Legal Advisor's Office) for the
C *respondent.*

Su Tiang Joo JC:

INTRODUCTION

D

[1] The applicant served in the Malaysian Immigration Department. He was found guilty of having approved an application for a Malaysian International Passport by an applicant who used a forged national identity card. He was dismissed. He commenced judicial review proceedings to quash
E this decision and to be reinstated. His application was dismissed and these are the grounds of judgment.

BACKGROUND

F **[2]** At the time of his dismissal, the applicant having served in the Malaysian Immigration Department ('MIM') for about 23 years, was 43 years old.

[3] Disciplinary proceedings which led to his dismissal commenced with a
G show-cause letter to him dated 3 April 2018 (encl 5, exh P3) from the Chairman of the Disciplinary Board ('R1') informing the applicant that a report had been received which warrants disciplinary action with the view to having him dismissed or demoted.

H **[4]** In the show-cause letter of 3 April 2018 received by the applicant on 16 April 2018 (encl 5, exh P3, pp 49–52), it was alleged that whilst on duty at Pejabat UTC, Perak, Jabatan Imigresen Malaysia, Negeri Perak on 22 March 2016 the applicant had approved an application by one Harlizah bt Jaman for a Malaysian International Passport. As it turned out, this applicant had relied
I upon a MyKad No 891208–14–5058 which was later confirmed to be non-existent, that is, it was not issued by the National Registration Department.

[5] The applicant was also informed that such act of dereliction could be

deemed to be a misconduct in breach of regs 4(2)(e) and 4(2)(i) of the Public Officers (Conduct and Discipline) Regulations 1993 ('the 1993 regulations') and punishable under regs 38(f) and (g). These regs are set out here:

> 4(2) An officer shall not —
>
> (e) lack efficiency or industry;
>
> (i) be insubordinate or conduct himself in any manner which can be reasonably construed as being insubordinate.
>
> 38 If an officer is found guilty of a disciplinary offence, any one or any combination of two or more of the following punishments, depending upon the seriousness of the offence, may be imposed on the officer:
>
> (f) reduction in rank; or
>
> (g) dismissal.

[6] The applicant was then asked to make his representations under reg 37(2)(b) of the 1993 regulations reproduced hereunder within 21 days from his receipt of the show-cause letter:

> (2) If it appears to the Chairman of the appropriate Disciplinary Authority that there exists a prima facie case against the officer, the Chairman of the appropriate Disciplinary Authority shall —
>
> (b) require the officer to make, within a period of twenty-one days from the date he is informed by notice in accordance with regulation 52 of the charge, a written representation containing the grounds upon which he relies to exculpate himself.

[7] The applicant alleged by letter dated 19 April 2018 to R1 (encl 5, exh P4), he had requested to be supplied with all documents in connection with the charge levelled against him. In this letter, he also asked for a copy of the Close Circuit Television ('CCTV') recording of the day of the alleged incident to enable him to reply in detail. The applicant also sought for an oral hearing to enable him to question witnesses who he said have levelled such an unfounded allegation against him.

[8] R1 allegedly did not accede to the applicant's requests contained in his letter of 19 April 2018. Nevertheless, within the 21 days limited to show cause, the applicant replied (encl 5, exh P5) denying he had placed his signature on the application form to signify approval and averred, inter alia, that some other officer could have used his user ID to process the impugned application. The applicant also questioned the integrity of the department's computer system.

[9] By letter dated 20 December 2018 (encl 5, exh P6), the applicant was notified that he was dismissed for the charge levelled against him. Acting pursuant to reg 38(g) of the 1993 regulations he was dismissed with effect from 15 December 2018. He was notified that pursuant to regs 14 and 15(1) of the

Public Services Disciplinary Board Regulation 1993 ('DB regs') he could appeal to the Public Service Disciplinary Appeal Board of the Public Service Commission ('Disciplinary Appeal Board') within 14 days of him receiving the decision of the Disciplinary Board and these regs are set out here:

> 14 An officer aggrieved by the decision of the Disciplinary Board established under subregulation 2(1) may appeal against such decision to the Disciplinary Appeal Board established under regulation 12.
>
> 15(1) An appeal shall be made in writing by an officer referred to in regulation 14 (hereinafter referred to as 'the appellant') to the Disciplinary Appeal Board through his Head of Department within fourteen days from the date on which the decision of the Disciplinary Board is communicated to him in writing.

[10] By letter dated 16 January 2019, the applicant appealed to the Disciplinary Appeal Board (encl 5, exh P7). However, instead of receiving a decision from the Disciplinary Appeal Board, the applicant received a similar letter of dismissal dated 15 July 2019 from the Disciplinary Board (encl 5, exh P8). This prompted the applicant to again put up a letter of appeal dated 13 August 2019 to the Disciplinary Appeal Board (encl 5, exh P9).

[11] The Disciplinary Appeal Board at its sitting on 11 November 2019 found the appeal by the applicant to be without merits and vide its letter dated 19 November 2019 notified that his appeal had been dismissed (encl 5, exh P10). The applicant received this letter on 6 January 2020.

[12] The applicant then commenced judicial review proceedings on 3 April 2020 (encl 1).

[13] He obtained leave from this court on 13 July 2020 to apply for judicial review against the first four respondents, and later obtained leave to amend his application to add the Appeal Board as the fifth respondent on 13 January 2021.

[14] His substantive application for judicial review was heard on 12 November 2021 and was dismissed with costs. By notice of appeal filed on 6 December 2021 he appealed to the Court of Appeal.

APPLICANT'S GROUNDS TO BE REINSTATED

[15] The main crux of the applicant's complaint was that he was not supplied three important documents which were taken into account to enable him to make an adequate representation which would exonerate him.

[16] These three documents said to be vital were:

(a) the application form by Harlizah bt Jaman for a Malaysian International Passport (encl 12, exh KD1);

(b) the applicant's work attendance punch cards for the month of March 2016 (encl 12, exh KD1); and

(c) the letter dated 21 September 2016 from the National Registration Department to the Malaysian Immigration Department saying inter alia that Harlizah bt Jaman's MyKad No 891208–14–5058 does not exist (encl 12, exh KD3) (however, as it turned out, issue on this particular document was not taken up by way of substantive arguments).

[17] The applicant made the following assertions that if these documents had been supplied to him:

(a) the application form of Harlizah bt Jaman — he would have been able to engage a hand-writing expert to analyse the signature said to be his as he vehemently denies that it was his signature on this form approving the application on 22 March 2016; and

(b) the punch cards and CCTV recording — the punch cards have neutral value as they only show that he was on duty on the material date vis 22 March 2016 and that the CCTV would be able to show whether he was at the relevant counter.

[18] The applicant asserted that both the Disciplinary and the Appeal Boards have infringed the rule of natural justice by depriving him of these documents and in consequence denying him his right to rebut the accusation made against him. This he asserted, has prejudiced him in preparing his defence.

[19] Reliance was made on art 135(2) of the Federal Constitution which provides that 'no member of the [public] service shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard'.

[20] The following authorities were cited to support the point made by him of being denied the documents sought:

(a) *Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor* [2011] 5 MLJ 465; [2012] 1 CLJ 448 (FC);

(b) *Abdul Ghani Che Mat v Pengerusi Suruhanjaya Pasukan Polis & Ors* [2016] MLJU 1062; [2017] 3 CLJ 399 (CA);

(c) *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 2 MLJ 131; [2002] 1 CLJ 493 (CA);

(d) *Mat Ghaffar bin Baba v Ketua Polis Negara & Anor* [2008] 2 MLJ 1; [2008] 1 CLJ 773 (CA);

(e) *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169 (PC); *Setiausaha Suruhanjaya Pasukan Polis & Ors v Cheah Yen Khee* [2016] 2 MLJ 34; [2016] 2 CLJ 789 (CA);

(f) *Mohd Zulhazi Mohd Zulkafli v Suruhanjaya Pasukan Polis Diraja Malaysia & Anor* [2014] 5 MLJ 632; [2014] 1 LNS 574;

(g) *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364; [1991] 1 CLJ Rep 419 (SC); and

(h) *Raja Abdul Malek Muzaffar Shah Bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308; [1995] 1 CLJ 619 (CA).

[21] Delay in bringing the charge was also raised by the applicant. He pointed out that the alleged misconduct happened on 22 March 2016 but he was only charged after a period of two years vide the show-cause letter of 3 April 2018 and he added for good measure that the inference to be drawn is that there was condonation of his misconduct, if any.

[22] Coupled with the lack of documents, he asserted he was prejudiced as memories fade over time. If the CCTV recording had been made available he would have been able to refresh his memory. Reliance was placed on the case of *Dr Ahmad Jaafar bin Musa lwn Suruhanjaya Perkhidmatan Pelajaran* [2018] 9 MLJ 331; [2017] 1 LNS 2236.

[23] Together with his denial that the signature on (Harlizah bt Jaman's) application form was his, that there is no CCTV recording to show he was at the counter at the material time and that at the material time there was a critical shortage of officers working at the UTC Perak Immigration Office and were working on shifts resulting in the possibility that some other officer could have used his User ID to perform the impugned application, the applicant asserted that the respondents ought to have afforded him an oral hearing. These failures had deprived him of a reasonable opportunity of being heard resulting in the decision of both the Disciplinary and Appeal Board being inconsistent with the rules of natural justice.

RESPONDENTS' CONTENTIONS

[24] The respondents clarified that the Disciplinary Appeal Board had in fact by letter dated 14 May 2019 decided to direct the Disciplinary Board to reconsider the latter's decision to dismiss the applicant (encl 30, para 13).

[25] The Disciplinary Board did reconsider and by letter dated 15 July 2019, reaffirmed its decision (encl 5, exh P8) that the applicant was guilty as charged and he be dismissed. A

[26] The applicant's subsequent appeal to the Disciplinary Appeal Board was found to lack substance and the Disciplinary Board's decision was affirmed. B

[27] On the applicant's complaint that he had requested for documents via his letter of 19 April 2018, the respondents through its Timbalan Penolong Pengarah Kanan Immigresen, Muhamad Faizal bin Saidin deposed on affidavit (encl 23, para 4) categorically denying that they had received such a letter. C

[28] Muhamad Faizal bin Saidin went on to depose that the respondents had carried out a review of the Immigration Department's registration book on receipt of letters for the month of April 2018 and found that there was no record of receipt of such a letter of 19 April 2018 from the applicant. D

[29] Not only that, Muhamad Faizal bin Saidin exhibited a copy of the registration book for the receipt of letters for 19 April 2018 (encl 23, para 4, exh MF1) and it can be seen that there is no entry at all for the receipt of any letter dated 19 April 2018. Needless to say, this directly contradicts the applicant's assertion that he had sent his letter of 19 April 2018 albeit that there is an acknowledgment stamp of receipt by the Pejabat Imigresen Ipoh (encl 5, para 8, exh P8, p55). E F

[30] In the circumstances, the respondents asserted that they have never received such a letter of 19 April 2018 (encl 30, para 28).

[31] On the assertions made by the applicant, the respondents, Dato' Indera Khairul Dzaimee bin Daud, the Chairman of the Disciplinary Appeal Board deposed on affidavit the investigations that were carried out. He asserted they had carried out an in-depth and sincere investigation into the matter (encl 12). G

[32] He deposed that the events surrounding the dismissal of the applicant started when the Integrity Division Perak received a report on 23 August 2016 from the Intelligence Unit of the Security and Passport Division of the Immigration Headquarters at Putrajaya. H

[33] The report is about the issuance of a Malaysian International Passport No A37597629 to an individual with MyKad No 891208–14–5058. I

[34] After a review of the application form and from inquiries made it was found that the approving officer for the Malaysian International Passport to Harlizah bt Jaman was the applicant (encl 12, para 7, exh KD1).

[35] He exhibited the application form of 23 August 2016 which shows the signature of the applicant above his name stamp (encl 12, para 7, exh KD1). Also exhibited were the two attendance punch cards of the applicant for the month of March 2016.

[36] Besides these documents, they reviewed their department's MyIMMS computer system and it was established that there was no verification of the thumb print of the applicant at the time of the processing the impugned application for the Malaysian International Passport prior to its approval. when this ought to have been done by the processing officer, the applicant. His failure to carry out such a verification exercise was in breach of Arahan Kerja Pengurusan Passport Malaysia (AK IM H 01) — Arahan Kerja 1 (Permohonan Pasport Malaysia) para 9 (encl 12, para 9, exh KD3). The applicant was then given the show-cause letter dated 3 April 2018.

[37] Dato' Indera Khairul Dzaimee bin Daud then tabulated a chronology of the events commencing from date of receipt of an email from the Australian Embassy, followed by the report by the Integrity Division on 23 August 2016 up until the disciplinary proceedings undertaken on 15 July 2019 when the Disciplinary Appeal Board maintained the decision to dismiss the applicant (encl 12 paragraph 21).

[38] He deposed that action was taken from the time of the receipt of the report resulting in sincere internal investigations being carried out in accordance with the provisions prescribed. He denied that the transfer of the applicant to the Immigration Depot in Langkap in 2016 was a punishment for this matter and asserted that the applicant's contention that it was so is but a mere assumption.

[39] The respondents asserted that unlike a court hearing requiring the attendance of witnesses, the disciplinary proceedings is more in the nature of a meeting with a decision made after perusing all documents.

[40] The respondents further asserted that a comprehensive investigation was needed to be made and by reason thereto there was no delay and no condonation of the wrong done by the applicant with the applicant having been given sufficient opportunity to present his representations pursuant to the 1993 regulations.

[41] The respondents submitted that an oral hearing is not mandatory and it

is only necessary where the disciplinary authority considers that the case against the officer requires further clarification and consequently appoint a Committee of Inquiry. It all depends on the facts of each case (see *Kerajaan Malaysia & Ors v Tay Chai Huat* [2012] 3 MLJ 149; [2012] 3 CLJ 577 (FC) and *Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased)* [2008] 6 MLJ 1; [2008] 6 CLJ 573 (FC)).

[42] On there being no delay in the circumstances of this case, the respondents also placed reliance upon the case of *Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor* [2002] 3 MLJ 714 (CA) where it was held that there is no time frame to initiate a disciplinary action or to complete the disciplinary action and when time is not specified, the disciplinary action ought to be taken with all convenient speed with reliance placed upon s 54 of the Interpretation Acts 1948 and 1967.

[43] The respondents submitted that all public servants have the responsibility to maintain the good name of their department and the Government service in general and any neglect that result in a failure to do so will prejudice the discipline of the administration.

[44] The respondents concluded that there was no procedural unfairness or impropriety and there was no breach of natural justice on the part of the Disciplinary and Appeal Boards.

COURT'S ANALYSIS AND FINDINGS

[45] From the submissions advanced by the parties both written and oral, the following issues call for the consideration of this court:

(a) did the applicant request for documents vide his letter of 19 April 2018 when asked to make his representations and if so, was the failure by the respondents to comply amount to a breach of natural justice in the disciplinary proceedings;

(b) did the lack of oral hearing amount to a breach of natural justice in the disciplinary proceedings; and

(c) was there undue delay in pursuing disciplinary proceedings and related to this, was there condonation of the wrongdoing, on the part of the applicant.

LETTER OF 19 APRIL 2018

[46] Given the diametrically opposed position with the applicant asserting he had delivered his letter of request of 19 April 2018 coupled with there being

a rubber stamp of acknowledgment thereon (encl 5, p 55) and the respondents denying receipt of such a letter and exhing its registration book showing non-receipt of such a letter, after careful deliberations, I came to the conclusion that the respondents had not received such a letter for the following reasons:

(a) in the applicant's letter of representations of 2 May 2018 to the show-cause letter there was no mention at all of this letter of 19 April 2018 although he did make mention of not being served with documents in the possession of Disciplinary Board; and

(b) in my view, if there was such a letter, the applicant would have enclosed a copy with his letter of representation of 2 May 2018 or at the very least made mention of it in his letter of representation of 2 May 2018.

[47] In any event, I am of the opinion that with him having worked in the Immigration Department for 23 years, he would know that one of the critical steps required is the signature of an approving officer. Since he was charged with approving an application when he should not, he would know that his signature would be on the form. And, if to his mind that such a charge is groundless, it would mean that his signature had been falsified which would then lead to the query as to whether he had lodged a police report on the same. No evidence was led by him to show that he did.

[48] There is a body of case law which have held that in such a circumstance, bereft of a timeous police report, any allegation of forgery is but a bare allegation (see *Wong Hon Leong David v Noorazman bin Adnan* [1995] 3 MLJ 283; [1995] 4 CLJ 155 (CA), *Bank Kerjasama Rakyat Malaysia Sdn Bhd v Chong Voon Chung* [2021] MLJU 359; [2021] 1 LNS 250 (CA) and *Floral Trends Limited v Li Onn Floral Enterprise (M) Sdn Bhd and Anor* [2006] MLJU 339; [2006] 6 CLJ 525 (HC)). I would hasten to add that to my mind, the applicant was facing disciplinary proceedings and not a prospective civil action and by reason of which, s 73A(3) of the Evidence Act would not apply to exclude the admissibility of his police report if he had lodged one.

[49] Be that as it may, I will still proceed to address the thrust of the applicant's complaint that he ought to have been supplied with the documents relied upon by the Disciplinary Board. On this, I gratefully adopt the comprehensive analysis undertaken by His Lordship, Wong Kian Kheong J in *Ezaky Mulya bin Sapawi v Dato' Sri Nadzri Siron (Pengerusi Lembaga Tatatertib, Kumpulan Sokongan (No 1)) & Ors* [2020] MLJU 1920; [2020] 1 LNS 1557 (HC) where in dealing with the 1993 regulations and in particular, regs 3, 4(1), (2)(a), (j), 34(1), (2), 37(2)(a), (b), (4), (5), 37D(a), (b) and Public Services Disciplinary Board Regulation 1993 regs 2, 12, 13, 14, 15(1), 16(2), (3), (4b), His Lordship held that:

[35] The applicant's learned counsel has submitted that before the applicant's representation was prepared, the DA should have furnished to the applicant all documents which had been submitted to the DA (Disciplinary Authority) (Documents (DA)) . If the Documents (DA) had been provided to the applicant before the preparation of the applicant's representation, he could have inserted in the applicant's representation any reply, correction and/or rebuttal to any allegation made against him in the Documents (DA).

[36] I am not able to accept the above contention by the applicant's learned counsel. This because there is no provision in the POR which obliges DA to provide the Documents (DA) to the applicant so as to enable him to prepare the applicant's representation. On the contrary, the only documents to be given to the applicant are provided by reg 37(2)(a) and (b) of the POR — please refer to the above para 30.

[30] Firstly, reg 37(2)(a) POR required the Chairman of the DA to 'direct' the two charges (containing the facts of the two disciplinary offences alleged to have been committed by the applicant and the grounds on which it was proposed to dismiss the applicant or to reduce his rank) to be sent to the applicant. According to reg 37(2)(b) of the POR, the DA's Chairman would require the applicant to make a written representation which would contain grounds to exculpate the applicant of the two charges within 21 days from the date the applicant was informed of the two charges. It is clear that reg 37(2)(a) and (b) of the POR do not provide for the acknowledgement of receipt to be part of the two charges. The sole purpose of the acknowledgement of receipt was to ensure that the applicant had been notified of the two charges and the applicant then had 21 days to send the applicant's representation to the DA from the date of receipt of the two charges by the applicant.

[50] In this case, the applicant was supplied with the charge in the show-cause letter of 3 April 2018 — nine calling upon him to reply within 21 days of receipt (encl 5, pp 49–52) and he had acknowledged receipt thereof (encl 5, p 52). Therefore, he had been served with all the necessary documents required by law.

[51] On the applicant's assertion that he saw the impugned application form for the first time during this judicial review proceedings and that if he had been supplied with it, he could have obtained the services of a document examiner to verify that it was not his signature, in my opinion, the applicant could have done so during this set of judicial proceedings, see O 53 r 6 of the Rules of Court 2012 reproduced below:

After leave has been granted, any party to an application for judicial review may apply to the judge for discovery and inspection of documents pursuant to O 24, to administer interrogatories pursuant to O 26, or to cross-examine the deponent of any affidavit filed in support of or in opposition to the application pursuant to O 38.

[52] See also *Ezaky Mulya bin Sapawi v Dato' Sri Nadzri Siron (Pengerusi*

Lembaga Tatatertib, Kumpulan Sokongan (No 1)) & Ors (HC) where His Lordship, Wong Kian Kheong J pointed out that this provision making available discovery in judicial review proceedings came into effect on 21 September 2000 and with five conditions to be fulfilled.

[53] With the applicant in this case emphasising on his loss of livelihood, his failure to resort to this procedure of discovery to challenge the authenticity of his signature on the impugned application form weighed heavily against him in my mind.

[54] Indeed, a comparison of his signature on the impugned application with the signatures of the applicant in documents filed in this action, led to the senior federal counsel submitting that they look similar and in my view, I tend to agree with him.

[55] In the circumstances, premised upon the facts and the law, the complaint by the applicant about not being supplied the documents he wanted is devoid of merits.

LACK OF ORAL HEARING

[56] Just as was held in *Ezaky Mulya bin Sapawi v Dato' Sri Nadzri Siron (Pengerusi Lembaga Tatatertib, Kumpulan Sokongan (No 1)) & Ors*, where reference was made to the Federal Court authority of *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417 at p 432; [2001] 2 CLJ 525 at p 541, the 1993 regulations and the Public Services Disciplinary Board Regulation 1993, these regs which govern the disciplinary proceedings which the applicant is subject to, do not confer any right of oral hearing.

[57] From the respondents' narrative, an application for a Malaysian International Passport requires not only an approval from the processing officer but of importance is the verification of the passport applicant's thumb print against his or her MyKad.

[58] In the case of Harlizah bt Jaman's application, it was tracked down to the applicant as having processed this application (encl 12, para 9, exh KD3) on the material date of 22 March 2016 using the MyImms System.

[59] In response to this, the applicant replied that as he had three IDs, it was possible that some other officer could have used his User ID without his knowledge at the material time to process the impugned application.

[60] Obviously, such an argument wherein the applicant is in effect saying he had allowed his ID to be compromised, did not find favour with the Disciplinary Board. Similarly, in my view, such an answer leaves much to be desired when weighed against the need to preserve and protect the integrity of our Malaysian passports as submitted by the respondents although they had used other words to this effect.

[61] There is also the other piece of evidence, namely, the applicant's attendance punch card which placed him at work at the material time.

[62] As for the authorities relied upon by the applicant on the need for there to be an oral hearing, with respect, they can be distinguished on the ground that there are the aforesaid material pieces of evidence pinpointing to the guilt of the applicant above. These authorities can be further distinguished as follows:

(a) *Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor* [2011] 5 MLJ 465; [2012] 1 CLJ 448 (FC) — the charges framed were held to be general in nature and lacked particulars with an exculpatory statement made requiring an oral hearing;

(b) *Abdul Ghani Che Mat v Pengerusi Suruhanjaya Pasukan Polis & Ors* [2016] MLJU 1062; [2017] 3 CLJ 399 (CA) — there was an acute conflict of evidence with two conflicting sets of facts with an exculpatory statement made requiring an oral hearing;

(c) *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 2 MLJ 131; [2002] 1 CLJ 493 (CA) — the letter of representation was sufficient to rebut the four charges and to exculpate the plaintiff with no evidence to contradict the plaintiff's exculpatory statement and an oral hearing ought to have been held;

(d) *Mat Ghaffar bin Baba v Ketua Polis Negara & Anor* [2008] 2 MLJ 1; [2008] 1 CLJ 773 (CA) — the charges were general in nature and lacking in particulars on the alleged corruption and an oral hearing ought to have been given;

(e) *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169 (PC) — the report of the Board of Inquiry which were denied the appellant contained details of witnesses heard by the Board who expressed views on the credibility of each witness and the weight to be attached to their statements and the judge must not hear evidence or receive representations from one side behind the back of the other;

(f) *Setiausaha Suruhanjaya Pasukan Polis & Ors v Cheah Yen Khee* [2016] 2 MLJ 34; [2016] 2 CLJ 789 (CA) — the respondent was not given an

opportunity to explain, contradict or rebut a new charge;

(g) *Mohd Zulhazi Mohd Zulkafli v Suruhanjaya Pasukan Polis Diraja Malaysia & Anor* [2014] 5 MLJ 632; [2014] 1 LNS 574 — this involved a charge of corruption with the appellant denying the statement of the person who was alleged to have given the bribe through a policeman;

(h) *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364; [1991] 1 CLJ Rep 419 (SC) — the previous conduct of the appellant was taken into account without giving her an opportunity to be heard on them; and

(i) *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308; [1995] 1 CLJ 619 (CA) — involved a failure to provide records of previous conduct and other documents yet to be disclosed without giving the applicant the opportunity to be heard on them.

[63] In this case, the charge is very specific with the particulars of the date and the alleged offence clearly set out in the show-cause letter. The issue is whether he was the one who processed the impugned application. There was ample evidence against him. The lack of an oral hearing, in the circumstance of this case, has not caused any injustice to the applicant.

DELAY AND CONDONATION

[64] As submitted by the learned senior federal counsel, where the procedure is provided by written laws then the courts should be wary of invoking common law (see the Federal Court in *Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased)* [2008] 6 MLJ 1; [2008] 6 CLJ 573), at para 34 where it was held that:

> [34] The general orders do not provide for the time when a disciplinary action is required to be taken against any officer for a disciplinary offence. Applying the principles earlier stated that where procedure is provided by written laws then the courts should be wary of invoking common law, the delay, even if there was one, is not a ground for holding that there was a procedural unfairness.

[65] With respect, I agree with the decision in *Ezaky Mulya bin Sapawi v Dato' Sri Nadzri Siron (Pengerusi Lembaga Tatatertib, Kumpulan Sokongan (No 1)) & Ors* at paras 56 to 58) that there is no limitation period for a disciplinary charge under the Public Officers (Conduct and Discipline) Regulations 1993.

[66] In any event, for the reasons proffered by the respondents, on the time required to carry out a comprehensive investigation to ascertain with care the officer who was to be charged before initiating disciplinary proceedings, it cannot be said to be not with all convenient speed.

[67] As was well said by His Lordship, Ahmad Murad Abdul Aziz JC in the two cases decided by him, one in *Yanlinus Philip v Mustafa bin Hj Ibrahim Pengerusi Lembaga Tatertib Kumpulan Sokongan (No 1) Jabatan Imigresen Malaysia, Putrajaya & Ors* [2021] MLJU 704; [2021] 1 LNS 574 and the other in *Mohamad Faisal Anudin bin Azmi v Dato' Mustafa bin Hj Ibrahim (Pengerusi Lembaga Tatertib Kumpulan Sokongan (No 1) Jabatan Imigresen Malaysia, Putrajaya) & Ors* [2021] 11 MLJ 522; [2021] 8 CLJ 83, the officers in Immigration Department are required to act with utmost integrity, honesty and diligence to protect our national security interest.

[68] I would also echo his concluding reference to the case of *Kerajaan Malaysia & Ors v Tay Chai Huat* [2012] 3 MLJ 149; [2012] 3 CLJ 577; [2012] 1 MLRA 661 which was also relied upon by the learned senior federal counsel, where the Federal Court held:

> [29] ... In the normal course, it is the disciplinary authority which is the best judge as to whether the person should be dismissed. In that context, the court can only exercise its powers of interference in a limited number of cases where it is shown that the decision to suspend is arbitrary and/or a mala fide exercise of power and/or colourable exercise of power. These are the parameters on which a disciplinary authority must consider when exercising its powers under the GO (Chapter D). It is not for the courts to interfere with exercise of discretion by the disciplinary authority otherwise than in the circumstances set out.

[69] As for the applicant's argument that the delay in prosecuting the charge against him would drive a reasonable tribunal to hold that there was condonation, surely public policy dictates, that the concept of condonation, can have no place at all in cases involving a contravention of public service regulations which would have the effect of prejudicing the protection of the integrity of our Malaysian passports and our borders. To hold otherwise, would be plainly irrational.

CONCLUSION

[70] In the upshot, I dismissed the substantive application for judicial review (encl 25) with costs of RM2,000 as prayed for by the respondents to be paid by the applicant.

A *Enclosure 25 dismissed with costs of RM2,000 to be paid by the applicant to respondents.*

Reported by Dzulqarnain Ab Fatar

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